

regulatory proposals containing significant unfunded mandates.”

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 12, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In §180.474, by alphabetically adding the following commodity “garlic” to the table in paragraph (b) to read as follows:

§180.474 Tebuconazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Garlic	0.1	6/30/00
* * *	* *	* *

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BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[OPP-30116; FRL-6056-6]

RIN 2070-AB78

Pesticide Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.68 percent cost of living and locality pay increase for civilian Federal General Schedule (GS) employees working in the Washington, DC and Baltimore, MD metropolitan area in 1999.

This rule does not, however, reflect the requirements in the Food Quality Protection Act of 1996 (FQPA), which states that the Agency shall collect tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions. The amendments to the tolerance fee schedule to meet the FQPA requirement will be addressed in a separate rulemaking, the proposal for which is expected shortly.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT:

About this rule contact Ed Setren, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, telephone: (703) 305-5927, fax: (703) 305-5060, e-mail: setren.edward@epa.gov. For further technical information about tolerance petitions and individual fees contact: Sonya Brooks, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (703) 308-6423, fax: (703) 305-5060, e-mail: brooks.sonya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this rule apply to me?

This rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture inert ingredients, importers of food, grower groups, or any person who seeks a tolerance. The vast majority of potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of Potentially Affected Entities
Chemical Industry	325320	0286	pesticide chemical manufacturers, formulators, chemical manufacturers of inert ingredients
.....	115112	0287	

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. If available, the four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this rule applies to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the rule (see Unit IV). If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How can I get additional information or copies of this document or other documents?

A. Electronically.

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>.

B. In person or by phone.

If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this rule, including the public version, has been established under docket control number [OPP-30116]. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305-5805.

III. What action is the Agency taking in this rule?

With this rule, the Agency is increasing the fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The pay raise in 1999 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.68 percent. This increase in the fees charged for processing tolerance petitions reflects this recent pay raise.

IV. Why is the Agency taking this action?

The EPA is charged with the administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. EPA is required to collect fees that will, in the aggregate, be sufficient to cover the costs of processing petitions, so that the tolerance program is as self-supporting as possible. The fee increases identified by this rule do not reflect the requirements of FFDCA section 408(m)(1) as amended by the Food Quality Protection Act (FQPA) of 1996 which states that the Agency shall collect tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions. Modifications of the tolerance fee schedule to meet the FQPA requirement will be addressed by a proposed rule now in development.

The current fee schedule for tolerance petitions published in the **Federal Register** on May 27, 1998 (63 FR 28909)(FRL-5775-4), codified at 40 CFR 180.33, and became effective on June 26, 1998. At that time the fees were increased 2.45 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries (40 CFR 180.33(o)).

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay". The intent of the legislation is to make Federal pay more responsive to local

labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis. The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/ Baltimore, MD pay area.

The pay raise in 1999 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.68 percent; therefore, the tolerance petition fees are being increased by 3.68 percent. The entire revised fee schedule in § 180.33 is presented for the reader's convenience. (All fees have been rounded to the nearest \$25.00.)

V. Why is EPA issuing this action as a Final Rule?

EPA is publishing this action as a final rule pursuant to 40 CFR 180.33(o), which reads in part:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale [...]. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

VI. What regulatory assessments requirements apply to this action?

This action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children From Environmental Health Risks and Safety* (62 FR 19885, April 23, 1997). Nor does it require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub.L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, this action does not

involve any technical standards that trigger the requirement in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) which directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Since this action does not require a proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VII. Must EPA submit this action to Congress and the General Accounting Office?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 12, 1999.

Susan H. Wayland,

Acting Assistant Administrator Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of \$68,025, plus \$1,700 for each raw agricultural commodity in excess of nine for which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of \$15,550 plus \$1,025 for each raw agricultural commodity for which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of \$12,550.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of \$27,175 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of \$3,850.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of \$13,525 plus \$1,025 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of \$8,500. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less \$1,700 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less \$1,700 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e.,

paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of \$3,400.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of \$33,950 to cover the costs of the advisory committee. Further advance deposits of \$33,950 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of \$1,700 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All

deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-6346-2]

Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA is granting this variance because the

chemical properties of these two wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L TCLP) and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated to meet this treatment standard.

CWM intends to stabilize the wastes at their Kettleman City, California facility. Upon promulgation of this final rule, CWM may treat these two specific wastes to alternate treatment standards of 51 mg/L TCLP for the Owens-Brockway waste and 25 mg/L TCLP for the Ball-Foster waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

DATES: This final rule is effective on May 11, 1999.

ADDRESSES: The official record for this rulemaking is identified by RCRA Docket Number F-1999-CWMF-FFFFF and is located at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. Follow these instructions to access the information electronically:

WWW: <http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr>

FTP: [ftp.epa.gov](ftp://ftp.epa.gov)

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703 412-9810 or TDD 703 412-3323. For more detailed information on specific aspects of this rulemaking, contact Josh Lewis at (703) 308-7877 or lewis.josh@epa.gov, or Elaine Eby at (703) 308-8449 or eby.elaine@epa.gov, Office of Solid Waste (5302 W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council vs. EPA*, 886 F.2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance. See 40 CFR 268.44. If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current Selenium Treatment Standard?

In the Third rule (55 FR 22521, June 1, 1990), the Agency used performance data from the stabilization of a selenium D010 mineral processing waste, which we determined to be the most difficult to treat selenium waste, to set the national treatment standard for selenium. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment selenium TCLP levels were between 1.80 and 0.154 mg/L TCLP, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters. At that time, EPA also had information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed and, therefore, concluded that the standard of 5.7 mg/L was achievable.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L TCLP continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium